

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 13878 OF 2006(B)

PETITIONER:

1. MUVATTUPUZHA RUBBER MARKETTING CO-OP.
SOCIETY LTD. NO.3094,
MUVATTUPUZHA, REP. BY ITS MANAGING DIRECTOR.
2. THE PRESIDENT,
MUVATTUPUZHA RUBBER MARKETING CO-OP. SOCIETY
LTD.NO.3094,
MUVATTUPUZHA.

BY ADV. SRI.M.C.CHERIAN
SMT.SARAMMA CHERIAN
SMT.ASHA CHERIAN
SRI.P.M.SANEER

RESPONDENTS:

1. THE SPECIAL TAHSILDAR (LAND ACQUISITION)
N.H.NO.1, KAKKANAD, ERNAKULAM.
2. THE EXECUTIVE ENGINEER,
KERALA STATE TRANSPORT PROJECT (KSTP),
DIVISION OFFICE, REST HOUSE COMPOUND,
MUVATTUPUZHA.
3. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, KAKKANAD.

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ADDITIONAL RESPONDENTS:

4. VARGHESE MATHEW, ADVOCATE (DIRECTOR, MUVATTUPUZHA RUBBER MARKETING SOCIETY LTD.), RESIDING AT MANGALATH HOUSE, NEW 130 JUNCTION, MUVATTUPUZHA P.O., MUVATTUPUZHA.
5. SRI. N.R. JORDI, (DIRECTOR, MUVATTUPUZHA RUBBER MARKETING SOCIETY LTD.), RESIDING AT NADUVILEDATH HOUSE, ANCHALPETTY P.O., MUVATTUPUZHA.
6. SRI. K.V. ABRAHAM, (DIRECTOR, MUVATTUPUZHA RUBBER MARKETING SOCIETY), RESIDING AT KODAMPILLI HOUSE, EAST MARADY, MUVATTUPUZHA.

(ADDITIONAL R4 TO R6 ARE IMPEADED AS PER ORDER DATED 21.6.2006 ON I.A. 8455/2006.)

GOVERNMENT PLEADER SRI. L.G. SURESH BABU.
SRI.H.SIVARAMAN
SRI.MATHEW CHERIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/01/2007, ALONG WITH WPC NO. 28627 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1	TRUE COPY OF LETTER NO. 115/2005-2006 DATED 8.6.2005 OF 1ST PETITIONER TO 2ND RESPONDENT.
EXT.P2	TRUE COPY OF THE NOTICE DATED 1.8.2005 OF THE 1ST RESPONDENT.
EXT.P3	TRUE COPY OF NOTICE DATED 15.12.2005 OF 1ST RESPONDENT.
EXT.P4	TRUE COPY OF LETTER NO. KSTP/M/365/2002 DATED 8.12.2005 OF 2ND RESPONDENT TO 1ST PETITIONER.
EXT.P5	TRUE COPY OF LETTER/REPRESENTATION OF 1ST PETITIONER TO THE RESPONDENT 1 AND 2.
EXT.P6	TRUE COPY OF LETTER/REPRESENTATION OF 1ST PETITIONER TO THE RESPONDENT 1 AND 2.
EXT.P6	TRUE COPY OF LETTER/REPRESENTATION DATED 23.1.2006 OF 2ND PETITIONER TO 3RD RESPONDENT.
EXT.P7	TRUE COPY OF THE RESOLUTION NO. 7 DATED 11.2.2006 OF THE PETITIONER'S SOCIETY.
EXT.P8	TRUE COPY OF LETTER/REPRESENTATION NO. 196/2005-06 OF PETITIONERS TO RESPONDENTS.
EXT.P9	TRUE COPY OF JUDGMENT DATED 22.3.2006 IN W.P.(C) NO. 5922/06.
EXT.P10	TRUE COPY OF NOTICE NO. A2-372/06 DATED 6.4.2006 OF 1ST RESPONDENT TO 1ST PETITIONER.
EXT.P11	TRUE COPY OF LETTER DATED 17.4.2006 OF PETITIONERS' COUNSEL TO 1ST RESPONDENT.
EXT.P12	TRUE COPY OF A/D CARD BEARING SIGNATURE OF 1ST RESPONDENT ON 19.4.2006.
EXT.P13	TRUE COPY OF ORDER NO. L.A.C. 11/05 DATED 20.4.2006 OF 1ST RESPONDENT.

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- EXT.P14(A) SKETCH OF THE GROUND FLOOR OF THE BUILDING OF PETITIONERS' SOCIETY.
- EXT.P14(B) TRUE SKETCH OF THE FIRST FLOOR OF THE BUILDING OF PETITIONERS; SOCIETY.
- EXT.P14(C) TRUE SKETCH OF THE SECOND FLOOR OF THE BUILDING OF PETITIONERS' SOCIETY.
- EXT.P15 TRUE COPY OF LETTER DATED 11.5.2006 OF PETITIONER'S COUNSEL TO 1ST RESPONDENT.
- EXT.P16 TRUE COPY OF NOTICE OF AWARD NO. 73/2006 INK. L.A.C. 11/05, DATED 2.5.2006 OF 1ST RESPONDENT.
- EXT.P17 TRUE COPY OF NOTICE NO. 73/06 IN L.A.C. 11/05 DATED 2.5.2006 OF 1ST RESPONDENT TO 2ND PETITIONER.
- EXT.P18 TRUE COPY OF RELEVANT PORTION OF TRADING ACCOUNT OF 1ST PETITIONER SOCIETY FOR THE YEAR ENDED 31.3.2005.
- EXT.P19 TRUE COPY OF THE JUDGMENT DATED 25.5.2006 IN W.P.(C) NO. 12519/2006 OF HON'BLE HIGH COURT OF KERALA.
- EXT.P19A TRUE COPY OF THE MINUTES DATED 15.11.2004 OF THE 1ST PETITIONER SOCIETY.
- EXT.P20 TRUE COPY OF THE NOTICES DATED 27.1.2006 OF THE SPECIAL GENERAL BODY MEETING OF THE SOCIETY.
- EXT.P21 TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE SPECIAL GENERAL BODY MEETING OF THE SOCIETY AS CONTAINED IN PAGES 381, 382 AND 391 OF THE MINUTES BOOK.
- EXT.P22 TRUE COPY OF THE RELEVANT PORTION OF THE AUDIT REPORT DATED 11.10.2006 OF THE SOCIETY, PREPARED BY M/S. ABRAHAM & JOSE, CHARTERED ACCOUNTANTS.
- EXT.P23 TRUE COPY OF LETTER DATED 13.11.2006 OF EXECUTIVE ENGINEER TO VICAR OF ARAKUZHA CHURCH.

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EXT.P24 TRUE COPY OF THE MINUTES DATED 1.11.2006 OF THE MEETING BETWEEN LAND ACQUISITION AUTHORITIES & BOARD MEMBERS OF SOCIETY.

EXT.P25 TRUE COPY OF THE BUILDING PLAN SUBMITTED TO MUVATTUPUZHA MUNICIPALITY BY THE SOCIETY.

EXT.P26 TRUE COPY OF RECEIPT DATED 14.11.2006 OF THE MUVATTUPUZHA MUNICIPALITY.

RESPONDENTS' EXHIBITS:

EXT.R2 KSTP LETTER NO. KSTP/M/365/2002 DATED 25.02.2006.

EXT.R4(a) TRUE COPY OF THE MASS PETITION SUBMITTED BY THE MEMBERS SOCIETY TO THE HON'BLE MINISTER FOR CO-OPERATION.

EXT.R4(b) TRUE COPY OF PETITION SUBMITTED BEFORE THE 3RD RESPONDENT DATED 20.4.2006.

EXT.R4(c) TRUE COPY OF THE CONSOLIDATED BALANCE SHEET OF THE SOCIETY AS ON 31.3.2004 SHOWN IN ITS ANNUAL REPORT FOR THE YEARS 2003-04.

EXT.R4(d) TRUE COPY OF CONSOLIDATED BALANCE SHEET AS ON 31.3.2005 AS SHOWN IN ITS ANNUAL REPORT FOR THE YEAR 2004-05.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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W.P.(C) NOS. 13878 & 28627/2006

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DATED THIS, THE 30TH DAY OF JANUARY, 2007

J U D G M E N T

W.P.(C) 13878/2006 is filed by the Muvattupuzha Rubber Marketing Co-operative Society Ltd. inter alia seeking for a direction to quash Exts.P13, P16 and P17 and for a declaration that the society is entitled to get compensation in respect of the whole building. There is a further prayer for a direction prohibiting respondents from proceeding with the acquisition notified under Ext.P2 and P3 without valuing and determining compensation for the entire building belonging to the petitioner Society. W.P.(C) 28267/2006 is filed by two members of the Muvattupuzha Rubber Marketing Co-operative Society inter alia seeking for a direction to the respondents not to proceed with the acquisition of the entire land and building owned by the Society and for a declaration that the society cannot compel the land acquisition authorities to acquire the entire land and the building for widening the road.

2. Additional respondents 4 to 6 impleaded in W.P.(C) 13878/2006 are some of the directors who oppose the prayer made in the said writ

petition and virtually supporting the two members who has filed W.P.(C) No. 28627/2006. Both the above writ petitions therefore relate to the acquisition of the building belonging to the Muvattupuzha Rubber Marketing Co-operative Society Ltd. No. 3094, for the purpose of widening a road. Ext.P2 is the Notification issued under Section 4(1) of the Kerala Land Acquisition Act proposing to acquire an extent of 0.0032 hectares of land in Sy. No. 365/5-22, which is described as purayidam. The building is owned by the Muvattupuzha Rubber Marketing Co-operative Society. Ext.P3 is issued under Section 9(3) of the Act requiring the owner of the land to prove ownership of the land. Curiously enough, Ext.P3 refers only an extent of 0.0037 hectares in Sy. No. 365/5-22 and nothing is mentioned about Sy. No. 365/5-23 which is another extent made mention of in Ext.P2. According to the petitioner, a portion of the building alone cannot be acquired and the Society has an option to have the entire building acquired by virtue of Section 49 of the Land Acquisition Act. It is the further contention of the petitioner that the respondent is bound to acquire the entire building in case it is desired by the owner of the land as contemplated under Section 49 of the Act.

3. Though Exts.P13, P16 and P17 are under challenge subsequently, by virtue of Ext.P24 produced along with I.A. No.

17599/2006, the Executive Engineer of the Kerala State Transport Project Division, who is the second respondent in W.P.(C) 13878/2006 has already accorded sanction for full value of the building owned by the Society. As such, the grievance the petitioner, in W.P.(C) 13878/2006, had at the time of filing the said writ petition has been redressed by Ext.P24 proceedings of the meeting held by the second respondent with the representatives of the petitioner Society regarding the compensation to be paid towards the entire building.

4. Learned Government Pleader appearing on behalf of the respondents 1 to 3 also submits that the decision contained in Ext.P13 is no longer in force because of the subsequent developments as revealed by Ext.P24. As regards the legal position is concerned, Section 49 of the Land Acquisition Act makes it clear that "the provisions of the Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired." Therefore, if the authorities proposes to acquire only a part of the building necessarily, the owner of the building being the Society, if it is desirous of acquiring the entire building, the said option is bound to be accepted by the requisitioning authorities in view of the clear provisions contained in

Section 49 of the Act. However, in view of Ext.P24, it is no longer necessary to quash the previous proceedings. But however, if the decision in Ext.P24 is altered to without accepting the option of the Society under Section 49 of the Act, it will be open to them to approach this Court.

W.P.(C) 13878/2006 is accordingly disposed of.

5. In W.P.(C)28627/2006 the petitioners would contend that it is not necessary to acquire the entire building and that will be against the interest of the Society. They have also produced Ext.P1 copy of the minutes of the general body meeting of the Society and presses the same into service to show that the general body has decided not to proceed with the acquisition of the entire building. Ext.P21 produced along with W.P.(C) 13878/2006 would show that there was another Special General Body meeting convened for the purpose and the learned counsel appearing for the petitioners in the said writ petition would place heavy reliance on the said decision to show that the meeting convened for the particular purpose of considering as to whether the entire building should be acquired, has considered the matter and passed a resolution as contained in Ext.P21 in favour of acquiring the entire building. I need not go into the rival contentions as to which is the general body resolution to be acted upon. If the petitioners in W.P.(C)28627/2006 have got any grievance that the

Board is acting contrary to the decision of the general body meeting, its remedy is to approach the Co-operation Department and this Court is not to decide such issues as to which is the general body meeting and which is the resolution to be acted upon. However, they can't seek for a writ of mandamus directing the respondents not to acquire the entire building. An individual member has no such right. The members of the Society can only speak through the general body and if as a matter of fact, any such decision is taken by the general body and it is contrary to the decision taken earlier, the remedy is to approach the Department for redressal of such grievance. In such circumstances, leaving open the right of the parties to approach the appropriate forum, W.P.(C) 28627/2006 is dismissed.

P.R. RAMAN,
JUDGE.

knc/-